Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Interior Telephone Company, Inc.	)	WC Docket No. 07-102
Petition for Declaratory Ruling On the Scope of the Duty of a Rural Local Exchange Carrier to Provide Interim Interconnection	)	

REPLY COMMENTS OF INTERIOR TELEPHONE COMPANY, INC. IN SUPPORT OF PETITION FOR DECLARATORY RULING

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SUMMARY

Interior Telephone Company, Inc. ("Interior") files these reply comments in support of its Petition for Declaratory Ruling (the "Petition") in which Interior requested that the Commission clarify that Section 51.715 of the Commission's rules does not require an incumbent local carrier ("ILEC") to offer interim interconnection to exchange local traffic before the final, non-price terms of interconnection are reached through the negotiation and arbitration process pursuant to Section 252 of the Communications Act (the "Act").

The only comments that were filed in opposition to the Petition were those filed by General Communication, Inc. ("GCI") and Sprint Nextel Corporation ("Sprint"). Both GCI and Sprint misconstrue the issue that Interior presented to the Commission by claiming that Interior is asking the Commission to find that Section 51.715 would never require an ILEC to offer interconnection. Interior, however, is rightfully asking the Commission to clarify, in the light of the many references made to interim pricing in the rule itself, in the *Local Competition Order*, and pursuant to the policy considerations of the Act, to clarify the scope of the interim interconnection obligation.

The initial comments indicate that the disagreement between Interior and GCI has practical implication for ILECs across the county, both large and small. The comments in support of the Petition illustrate the harmful issues that could reverberate from GCI and Sprint's impractical interpretation of Section 51.715. On the other hand, GCI and Sprint simply fail to rebut the substantive arguments that were presented by Interior that were based on both the express language of Section 51.715 and the policies articulated by the Commission in the *Local Competition Order* under which the rule was adopted.

The course of conduct in GCI's negotiations with Interior also reveals that GCI is attempting to use its strained interpretation of Section 51.715 to gain an unfair advantage over a small, rural local exchange carrier in an interconnection proceeding. The record also indicates that GCI did not even initially invoke Section 51.715 in order to expedite its offering of services to consumers, but rather, it attempted to use the provision as a means for gaining leverage on Interior in the negotiation process. The Commission should not endorse this obvious abuse of the statutory interconnection negotiation and arbitration process.

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Interior Telephone Company, Inc. ("Interior"), hereby files these reply comments in support of the Petition for Declaratory Ruling (the "Petition") in which Interior requested that the Commission clarify that Section 51.715 of the Commission's rules does not require an incumbent local exchange carrier ("ILEC") to offer interim interconnection to exchange local traffic before the final, non-price terms of interconnection are reached through the negotiation and arbitration process pursuant to Section 252 of the Communications Act (the "Act").[1] Most parties commenting on Interior's Petition in the initial round[2] support Interior's straightforward and practical reading of Section 51.715, and agree that the concerns which the Commission

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1 *Petition for Declaratory Ruling of Interior Telephone Company, Inc.*, WC Docket 07-102 (filed May 3, 2007).

2 Comments of Alaska Telephone Association, (filed May 31, 2007) ("ATA"), Cordova Telephone Cooperative, Inc. (filed May 31, 2007) ("Cordova"), Qwest Corporation, (filed May 31, 2007) ("Qwest"), and Western Telecommunications Alliance ("WTA") and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), (filed May 31, 2007).

identified when it adopted the order are consistent with Interior's interpretation of the rule section.

The only commenters opposed to Interior's Petition -- GCI and Sprint -- claim that Interior is asking the Commission to find that Section 51.715 never requires an ILEC to offer intermediate interconnection.[3] Both GCI and Sprint misconstrue the issue that Interior has presented to the Commission. Interior is not claiming that Section 51.715 would never require an ILEC to offer interim interconnection. Interior acknowledges in its Petition that Section 51.715 creates an obligation for ILECs to provide interim interconnection in some circumstances.[4] Interior agrees that an ILEC must provide interconnection in the interim period after the terms of an interconnection agreement have been reached but when rates are still being determined, and that Section 51.715 ensures that an ILEC can not hold out on providing the interconnection services outlined in an agreed upon interconnection agreement solely because a state commission has not yet determined the underlying reciprocal compensation rates.

To begin with, contrary to GCI's allegation[5], Interior fully embraces its obligation to interconnect with GCI as a certificated competitive carrier. This proceeding is not about that obligation, as GCI would like the Commission to believe. This proceeding is about the statutory procedures for negotiation and arbitration of an interconnection agreement which GCI's interpretation of Section 51.715 would serve to preempt and disrupt.

Secondly, the Petition does not ask the Commission to determine that Section 51.715 would never allow interim interconnection, but instead asks the Commission clarify when the

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3 GCI Comments, at 9, 18, Sprint Comments, at 3.

4 As the name of the proceeding states, the Petition is for "a Declaratory Ruling on the *Scope* of The Duty to a Rural Local Exchange Carrier to Provide Interim Interconnection"; *see also*, *e.g.*, Interior Petition at 16-17.

5 GCI Comments, at 18-19.

ILEC must do so. The Petition, therefore, rightfully asks the Commission, in light of the many references made to interim pricing in the rule itself, in the Local Competition Order[6], and pursuant to policy considerations of the Act, to resolve the ambiguities within Section 51.715 and clarify the circumstances in which the ILEC must offer interim interconnection.

Each argument raised by the two opposing parties has been anticipated and addressed in Interior's original Petition, which it hereby reaffirms. These arguments will, nevertheless, be summarized here for the Commission's benefit.

I. SECTION 51.715 APPLIES ONLY TO INTERIM TRANSPORT AND TERMINATION PRICING

A. The interpretation of Section 51.715 in the Petition is consistent with the plain language of the rule.

GCI and Sprint would have the Commission believe that Section 51.715 is crystal clear and that Interior has distorted the otherwise plain language of the rule. GCI claims that Interior tries to "spin the straightforward language" of Section 51.715.[7] However, as Interior demonstrated in its Petition,[8] the language of Section 51.715 has many references that directly support its conclusion that Section 51.715 requires only interim interconnection for the transport and termination of local traffic in Section 51.715 when a lengthy rate docket or arbitration threatens to thwart the statutory timeline for negotiating and implementing an interconnection agreement that was established in Section 252 of the Act.

The only way that GCI's asserted "straightforward" reading of the rule would warrant consideration would be for the Commission to ignore any reference to "rates" that the Commission specifically incorporated in the provision when it was adopted. In fact, each of the

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6 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (Rel. Aug. 8, 1996) ("Local Competition Order").

7 GCI Comments, at 9.

8 Interior Petition, at10-12.

subsections of the rule is concerned with interim *rates* for transport and termination of traffic, a fact that GCI and Sprint seek to evade. Section 51.715(a) directs that:

> Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination *rates and approval of such rates* by a state commission under Sections 251 and 252 of the Act (emphasis added).

Subsection (b) of Section 51.715 goes on to direct that:

> Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for the transport and termination of telecommunications traffic *at symmetrical rates* (emphasis added).

Subsection (c) of the provision addresses the circumstances – in each case, "with respect to rates" -- under which an interim agreement will terminate. Finally, subsection (d) discusses methods for true-up of rates charged under an interim arrangement once the parties have reached agreement or arbitrated rates or if the rates differ from the rates established by the state commission pursuant to Section 51.705. Section 51.705 of the rules in turn identifies the several methodologies that state commissions may employ for the establishment of reciprocal compensation rates.[9]

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[9] GCI also claims that Interior's interpretation of Section 51.715 must fail because it would render Section 51.707 superfluous. GCI Comments, at 15. It is difficult to understand this element of GCI's argument since 51.705 incorporates 51.707 by reference as regards default proxies of transport and termination rates adopted by state commissions. Section 51.707 establishes the requirements in which state commissions may establish rates for the transport and termination of traffic. Section 51.715 incorporates these Section 51.707 rates through 51.705, explaining that in some circumstances carriers are to use the default price and ceiling ranges in Section 51.707 as the interim pricing of the interim interconnection agreement, while final rates are being determined. 47 CFR 51.715(b)(3).

Beyond making bald assertions that the rule provision does not contain the language it does, neither GCI nor Sprint offers any explanation as to why the Commission limited interim interconnection in the rule to the time period "pending negotiation or arbitration regarding transport and termination *rates* and approval of such *rates* by a state commission under Sections 251 and 252." If, as GCI and Sprint claim, the Commission so clearly and in a straightforward manner intended for the rule to require ILECs to offer interim interconnection at any time a carrier so requests, the rule would have to be rewritten to encompass this broadened scope. Fortunately, the Commission follows the well established precept of regulatory construction that, wherever possible, a rule must be interpreted to account for all of its terms.[10]

GCI instead claims that Interior cannot reconcile the plain meaning of Section 51.175 with its interpretation of the rule because the word "pending" as used above clearly indicates that interim interconnection was meant to be prior to the completion of the negotiation, arbitration and approval of an entire interconnection agreement pursuant to Section 252 of the Act. GCI does not explain or reconcile why the Commission specifically addressed "rates" into the clause. If the clause so clearly requires interim interconnection during the negotiation and arbitration period, why did the Commission limit the clause to only the final determination of transport and termination rates?

Perhaps GCI's interpretation of Section 51.715 would make more sense if state commissions only considered rates when approving agreements under Section 251 and 252 of

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[10] *See* Montclair v. Ramsdell, 107 U.S. 147, 152 (1883) (courts should "give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."); Bailey v. United States, 516 U.S. 137, 146 (1995) ("we assume that Congress used two terms because it intended each term to have a particular, nonsuperfulous meaning") (rejecting an interpretation that would have made "uses" and "carries" redundant in a statute).

the Act. Section 252(e) of the Act, which requires approval of an interconnection agreement by a state commission, however, allows a state commission to reject an agreement for any number of reasons. Section 252(e) of the Act allows a state commission to reject:

> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that -
>
> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
>
> (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or
>
> (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.[11]

State commissions may reject interconnection agreements for reasons other than rates, and therefore the approval of an interconnection agreement is not done on the basis of to rates alone. The Commission, therefore, must have intended to give meaning to Section 51.715 when it said that transport and termination of local traffic pursuant to Section 51.715 is required only "pending" the "negotiation, arbitration and approval of *such rates* by a state commission."

GCI's explanation of the Commission's express limitation in the language of Section 51.715 to refer only to rates, and to base its discussion of Section 51.715 on rate issues in the *Local Competition Order*, is that it "merely reflects the close relationship between transport and termination of telecommunications traffic and the rates for doing so."[12] Not surprisingly, this general statement contains no analytical process to guide the Commission to the result the opposing parties seek. Further, Interior agrees that both interconnection and pricing are required to achieve interconnection. In fact, the general statement offered by GCI also supports Interior's

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[11] 47 U.S.C. § 252(e).

[12] GCI Comments, at 17.

Petition in that, through Section 51.715, the Commission recognized that interconnection was not possible when carriers had reached agreement on the terms of interconnection, but had to wait on a state commission decision for the pricing of the transport and termination of traffic. This is why the Commission promulgated the rule.

This also supports the fact that, even if transport and termination pricing has been determined, parties cannot immediately begin to exchange traffic if they have not reached agreement on the important second prong proffered by GCI, which is interconnection. As GCI itself explained, "both actual interconnection and pricing requirements are necessary to achieve competition."[13] Section 51.715 therefore must require the parties to reach agreement on interconnection pursuant to Section 251 and 252 of the Act, because it assists only with reaching the terms of interim pricing after interconnection has been negotiated. As Qwest explained in its comments, Section 51.715 is completely silent on how to handle instances where there is not an agreement between the ILEC and competitive local exchange carrier ("CLEC") regarding terms addressing the physical linking of the network. It states that "[o]ne would expect such terms if the rule were directed at disputed forms of interconnection, rather than disputed rates."[14] GCI offers no explanation as to why Section 51.715 only instructs carriers how to price interim interconnection, yet offers no assistance on how to reach terms of disputed interim interconnection.

Neither Sprint nor GCI attempt to reconcile with their interpretation of the rule the fact that Section 51.715 was promulgated pursuant to 47 U.S.C. § 251(b)(5), the provision of the Act that requires carriers to establish reciprocal compensation rates.[15] If the rule intended for ILECs

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[13] *Id.*

[14] Qwest Comments, at 2.

[15] *Local Competition Order,* at ¶1067.

to provide general interim interconnection, the Commission would have promulgated the rule under 47 U.S.C. § 251(a) that establishes the general interconnection obligations of carriers. Instead, the Commission explained it only "used its authority to establish interim regulations that address the 'just and reasonable' rates for the 'reciprocal compensation' requirement of section 251(b)(5)" to establish Section 51.715.[16] Again, why would the Commission limit Section 51.715 to pricing, if it intended the rule to cover all terms of interconnection.

Finally, although GCI devotes many pages to repetitive carping concerning Section 51.715's focused purpose, neither it nor Sprint is able to point to a single ruling of the Commission, or of a court or a state commission, endorsing their expansive reading of this provision. If there were any credibility to the interpretation GCI seeks to impose on the rule section, which departs from the rule's express terms, the issue would have by now been litigated and resolved in some forum.

B. The interpretation of Section 51.715 proposed in Interior's Petition is consistent with the Commission's concerns articulated in the *Local Competition Order*.

As Interior explained in the Petition, the Commission, through its express statements and its deliberate choice of words in categorizing the rule, demonstrated its concern that interconnection agreements which lacked agreement on rates for reciprocal compensation would be unduly delayed due to the fact that state commission cost studies may take longer than the statutory deadlines established in Section 51.715.[17] GCI, however, claims that the Commission said "nothing of the kind".[18] Sprint also claims there is no authority in the *Local Competition*

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16 *Id.*

17 Interior Petition, at 7-10.

18 GCI Comments, at 15.

Order that supports this position.[19] However, the paragraph of the *Local Competition Order* on which both Sprint and GCI rely for support for their interpretation of Section 51.715[20] concludes that "[t]he ability to interconnect with an incumbent LEC prior to the completion of a forward-looking, economic cost study, based on an interim presumptive price ceiling, allows carriers, including small entrants, to enter into local exchange service expeditiously."[21]

Significantly, Sprint, while purporting to support GCI's opposition, concedes in its Comments that the Commission's main concern, at the time it issued the *Local Competition Order* and adopted Section 51.715, was with the prospect of CLECs lacking leverage to negotiate favorable rates as part of the Section 251 interconnection process.[22] This makes sense because, in August 1996, when the Commission adopted the *Local Competition Order* just six months following passage of the Telecommunications Act, the typical CLEC was a small, newly created and often under-funded entity attempting to negotiate terms of interconnection with enormous Bell Operating Companies. It is likely, given this historical setting, that these large incumbents adhered to and enforced "cookie cutter" interconnection agreements designed primarily to protect their interests and offered to competitive entrants on a take-it-or-leave-it basis. Recognizing this reality, the Commission sought to level the playing field for the small competitors by providing them a mechanism for rate relief pending finalization of their formal interconnection negotiations and, thereby, permitting such new entrants to begin to provide service.

The situation faced by Interior, Cordova and the members of the ATA (as well as many of those small carriers represented by WTA and OPASTCO) is just the opposite. Although

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19 Sprint Comments, at 3.
20 Sprint Comments, at 2; GCI Comments, at 14-15.
21 *Local Competition Order*, at ¶1065.
22 Sprint Comments, at 4.

incumbents in their study areas, these largely rural carriers are small companies facing competition from much larger entrants. The present case of Interior and GCI is telling in this regard. GCI is the largest integrated communications carrier in the State of Alaska, providing long distance, cable and Internet access, and now a competitor in the local exchange sector as well. GCI, therefore, faces none of the handicaps that new, start-up competitors did in 1996. Its manpower resources and revenues outstrip those of Interior by many magnitudes.[23] It is already providing numerous lines of service, and faces none of the negotiating disadvantages that revenue-starved CLECs did in 1996. It is simply not in a position to be forced by Interior to accept unreasonable reciprocal compensation rates.

Moreover, Interior has agreed to a bill-and-keep arrangement under the new contract proposed by GCI. GCI, therefore, has only non-price interconnection issues left to negotiate. This is a very different situation from that identified in the *Local Competition Order*[24], where the Commission expressed concern with forcing a CLEC to choose transport and termination rates "not in accord with these rules or to delay its commencement of service." GCI is, therefore, seeking to shoe-horn itself within the parameters of a rule that was never intended to cover its situation. As a result of the disparities between it and Interior's resources, GCI already holds numerous negotiating advantages. Intent, however, on bullying its way into the market without giving the ILEC the opportunity to exercise its negotiating and arbitrating rights under Section 252, it is asking the Commission to transmogrify Section 51.715 into something for which it was never intended.

C. The interpretation of Section 51.715 advanced in Interior's Petition is consistent with the framework for establishing local exchange competition in the Act.

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[23] Interior Petition, at 15.

[24] *Local Competition Order*, ¶ 16029.

As Interior explained in the Petition, Congress established clear statutory timeframes for achieving interconnection in 47 U.S.C. § 252, and reading Section 51.715 as GCI and Sprint would have the Commission do would serve to preempt Congress' statutory timeframes by requiring carriers to provide immediate interconnection despite these statutory provisions.[25] Both Sprint and GCI try to distract from the real meaning of Section 51.715 by trying to claim that Interior's sole motive for filing this petition is to "avoid competition" in a way that "cannot be reconciled with the purpose of the 1996 Act."[26] Interior, however, is simply attempting to comply with the timeframe established by Congress in Section 252 of the Act in its interconnection negotiations with GCI. The timelines established by Congress in the Act under which carriers must achieve interconnection certainly cannot run counter to the purpose of the Act itself. If the timeframes for arbitrating and negotiating an interconnection agreement established in the Act are not sufficient to promote competition, Congress would have established a shorter timeframe. It is disingenuous for GCI and Sprint to claim that Interior is acting in an anti-competitive matter when it is following the clear procedures established in Section 252 in its negotiations with GCI.

II. INTERIOR'S INTERPRETATION OF SECTION 51.715 IS THE ONLY PRACTICAL APPLICATION OF THE COMMISSION'S RULE

As demonstrated in the Petition the *Local Competition Order,* pursuant to which Section 51.715 was adopted, contains some ambiguous phrasing on which GCI and Sprint seize.[27] The overall thrust of the *Order*, however, focusing as it does on state pricing mechanisms and procedures and the fact they are not governed by Section 252, confirms that Interior's reading of the rule is correct. The Commission should clarify its meaning by granting the Petition. As

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25 Interior Petition, at 12.
26 GCI Comments, at 6; Sprint Comments, at 1.
27 GCI Comments, at 14; Sprint Comments, at 4.

further demonstrated by Interior and many commenters in this proceeding, the only practical interpretation of Section 51.715 is that the rule requires interim interconnection only when the parties are waiting on reciprocal compensation rates to be determined, but have already reached agreement on the other terms and conditions of interconnection. Requiring carriers to interconnect at any point during the negotiation and arbitration of an interconnection agreement would raise many more questions on interconnection issues than Section 51.715 itself can answer, and therefore would require significant time on behalf of the Commission to address the many known, and unknown, issues that could result.

The impracticality of GCI's proposed purpose for the rule is reflected in its effort to engage the Commission, through its Comment, in reviewing the numerous open contractual issues remaining between the parties, and even to offer means for compromising some of the parties' differences on the draft contract in order to secure an interim arrangement. Section 51.715 was not intended as a vehicle to preempt and disrupt the Section 252 negotiation and arbitration process nor to drag the Commission into the role of contract mediator while the statutory negotiating period is playing out.[28]

GCI and Sprint's interpretation of Section 51.715 creates many public interest concerns. For example, exchanging traffic before the terms of interconnection have been established could endanger the level of service to local customers. As ATA noted, the Section 252 process "is intended to ensure that customers experience no degradation in access to the ubiquitous network upon the entry of a competitive telecommunications carrier in a market."[29] Interim

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[28] It is impractical to think that carriers would typically easily compromise on open interim interconnection issues. As Qwest notes, if ILECs agreed to provide interim interconnection under disputed terms, such a choice may ultimately prejudice the ILEC in any Section 252 arbitration. Qwest Comments at 3.

[29] ATA Comments, at 3.

interconnection at any time during the Section 252 process would also come at unfair and unacceptable harm to ILECs. Qwest offers a real example of how GCI's interpretation of Section 51.715 could produce the impractical result of requiring Qwest to provide disputed interconnection possibly at interim prices that do not reflect the terms and conditions of the interconnection.[30] There are also many unknown issues that could reverberate from such a requirement. WTA and OPASTCO explain in its comments that interim interconnection for the exchange of local traffic without an executed agreement between carriers can lead to substantial legal issues, including questions of legal liability and indemnification questions, that would otherwise be clear and established in an executed agreement.[31]

As is evident on the record, exchanging traffic under uncertain terms involves business and operational risks, many of which the commenters supporting Interior's Petition addressed, and others that remain unforeseen. Sprint, however, chooses not to address in its Comment the practical implications of the interpretation of Section 51.715 that it is asking the Commission to adopt. For its part, GCI seeks to downplay these.[32] As evidence of the broad range of issues that remain open in Interior's current negotiation with GCI, Interior has attached as Exhibit A a listing of the contract provisions under negotiation by the parties. The redlined provisions indicate the conceptual and language provisions that have yet to be agreed upon. Significantly, the redlined changes in Exhibit A were those made by GCI on Interior's latest draft of the document, and not by Interior. Contrary to GCI's allegation, Exhibit A also demonstrates that the open provisions in the parties' negotiation that are of concern to Interior, and would be in

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30 Qwest Comments, at 4.
31 WTA and OPASTCO Comments, at 3.
32 GCI Comments, at 20-23.

regards to an interim interconnection agreement, do not address only the resale of Interior services but rather primarily relate to interconnection issues.[33]

It appears that GCI's real motivation in pursuing its strained reading of Section 51.175 is reflected in footnote 50 if its Comment. Here, GCI criticizes Interior for making a "federal case" out of the parties' ongoing differences, and suggests that the parties' would be in a better position if Interior would relent from its reading of Section 51.715. For its part, Interior would note that it would have concluded an interconnection arrangement with GCI by this time had GCI simply accepted all of Interior's proposed terms in the draft agreement. Clearly, both parties want to preserve their rights in the negotiation and, potentially, arbitration of their differences. For the purpose of this Petition, Interior submits that its narrower interpretation of Section 51.715 more accurately reflects both the express terms and the Commission's stated policies underlying the rule section. No matter how hard GCI will try to paint the picture that carriers can simply interconnect without having to resolve serious operational issues, the Commission cannot ignore the fact that these issues will exist and in most instances the carriers will not able to be resolve these issues without any established frameworks or outside guidance. Further, for smaller carriers like Cordova and the members of the ATA, GCI's interpretation of the rule provision would disrupt the levelized playing field the Congress sought to establish in Section 252, thereby running contrary to the overall construct of the legislation and putting such small players at a distinct negotiating disadvantage.

III. GCI'S STRAINED INTERPRETATION OF SECTION 51.715 IS SYMPTOMATIC OF ITS UNWILLINGNESS TO ADHERE TO THE GOOD FAITH NEGOTIATION REQUIREMENTS OF SECTION 252 OF THE ACT

GCI's Comment is replete with allegations Interior is seeking to delay the interconnection process through its filing of the Petition seeking clarification of Section 51.715.[34] In fact,

[33] GCI Comments, at 21.

Interior's filing of its Petition was a completely defensive move engendered by GCI's lack of faith in the Section 252 negotiation process. Instead of focusing its energies constructively on reaching negotiated terms with Interior of the parties' draft interconnection agreement, GCI has resorted to a series of regulatory and litigious maneuvers designed to intimidate the much smaller ILEC and to extract through heavy-handed measures concessions that should be more properly the subject of bargained compromise and agreement between the parties who are, after all, preparing to enter into a long-term operational relationship with one another. It is important for the Commission to understand this course of conduct on the part of GCI to help understand the circumstances that gave rise to GCI's effort to utilize Section 51.715 of the Rules as a preemptive measure.

GCI's Comment recites[35] that it first requested Interior to begin good faith negotiations toward a voluntary agreement on October 19, 2006, and that the parties signed a written agreement to negotiate in good faith pursuant to Sections 251(a) and (b) of the Act. Missing from this background statement, however, is disclosure of the fact that, at the time it sent Interior its request for in good faith negotiations leading to a voluntary agreement, GCI also initiated a proceeding with the Regulatory Commission of Alaska ("RCA") for partial termination of Interior's rural exemption as it relates to Section 251(c)(1) of the Act (*see* Exhibit B attached). The objective of this novel request was to secure a termination of Interior's exemption from the duty to negotiate in good faith under Section 251(c)(1) of the Act. Clearly, GCI had approached the negotiation with Interior on the assumption and with the expectation that the ILEC would not engage in good faith negotiations, a fact that subsequent events have disproven. As Exhibit B

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34 GCI Comments, at 5-6.

35 *Id.*

indicates, GCI's request for good faith negotiations covered not only interconnection under Section 251(a), but resale terms, number portability/dialing parity, rights of way and reciprocal compensation, all under Section 251(b).

In addition to the request for good faith negotiations under Sections 251(a) and (b), GCI simultaneously filed on Interior discovery requests seeking answers to Interior's position relative to its entitlement to its rural exemption, and seeking information and documentation on Interior's universal service funding and access charge receipts over a period of three years (*see* GCI First Discovery Requests to ITC included as part of Exhibit B attached). GCI asked for Interior's response to the discovery request within 30 days. GCI explained in its letter requesting good faith negotiations that it needed "additional cost data" that would be "relevant to the arbitration under the terms of Section 252 of the Act in order to finalize interconnection issues and negotiate rates for interconnection and administrative services." GCI's letter (page 3) also requested that Interior voluntarily waive its rural exemption under Section 251(c)(1) and, if it did not, that GCI would be entitled to expect Interior's "active participation in assisting GCI to obtain, analyze and organize certain administrative and cost data related to any burden or claims of technical infeasibility that Interior claims would arise from being subjected to the duty to negotiate in good faith under Section 251(c)(1)."

Thus, GCI's initiation of its formal negotiating process with Interior involved much more than simply a request for good faith negotiations, but arrived hand-in-hand with materials indicating that GCI was preparing for litigation with Interior and that it expected the parties' negotiations to fail and lead to arbitration. As a result of this set of filings, the RCA opened a

docket on GCI's request for "partial termination" of Interior's rural exemption.[36] Needless to say, this heavy-handed launch of GCI's request for "good faith" negotiations resulted in putting the ILEC into a defensive, litigating posture, rather than to undertake scheduling of voluntary negotiations. The agreement for good faith negotiations to which GCI refers in its Comment was actually a form of settlement agreement between the parties pursuant to which GCI withdrew its request to the RCA for partial termination of Interior's rural exemption, and the parties' agreed on a schedule for negotiation of an interconnection agreement under Sections 251(a) and (b). In summary, GCI's decision to combine a request for good faith negotiations with the launch of an administrative hearing and filing of discovery delayed the parties' negotiation for 60 days.

Following their agreement on a schedule for good faith negotiations, the parties also agreed that GCI would produce to Interior a draft for negotiation based on a parallel negotiation that it was conducting with another ILEC in Alaska. After an initial draft was produced, the parties agreed that they would wait for GCI to produce to Interior an updated draft form, which was delivered in early March 2007. Since Interior's receipt of that amended draft, the parties have engaged in substantive discussion of the draft terms, and have exchanged redlined edits. While substantial progress has been made by the parties toward reaching agreement on numerous terms of the draft, as the redlined copy of GCI's latest amendments of Interior's revised text attached as Exhibit A indicates, a substantial number of conceptual and drafting details remain for the parties to reach final agreement.

The parties' progress in negotiating the terms of a voluntary agreement was set back a second time when GCI filed on Interior, initially on April 6, 2007, its request for interim

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[36] Docket U-06-128.

interconnection at Interior's Seward exchange effective June 18, 2007.[37] Because Interior believed that GCI had misinterpreted the scope and purpose of Section 51.715, efforts at progressing the parties' negotiations slowed as Interior and its counsel, who is a member of the Interior interconnection negotiating team, examined legal positions and exchanged correspondence with GCI on its request for interim interconnection in Seward pending the completion of negotiations or arbitration of a formal interconnection agreement.

Because GCI continued to insist through a series of correspondences that its interpretation of Section 51.715 required Interior in good faith to make interconnection available to it on an interim basis, notwithstanding that the parties have not finalized the operational or technical terms of their interconnection agreement, Interior turned to the Commission on May 3, 2007, requesting clarification of the scope of the rule, which is now the subject of this proceeding. The following day, GCI filed a request with the Enforcement Bureau of the Commission requesting mediation of the parties' disagreement with regard to Section 51.715 and also requesting that the Enforcement Bureau establish an accelerated docket for the consideration of GCI's draft complaint against Interior on this issue (*see* Exhibit C attached). The request for accelerated docket proposed that the Bureau schedule a "mini-trial" between the parties regarding the merits of their disagreement relative to Section 51.715. Interior again had to turn its energies and limited personnel resources from concentration on the substance of the parties' interconnection negotiations to responding to the request for establishment of an accelerated docket. Interior's response was filed on May 14, 2007 (*see* Exhibit D attached).[38] Among the argument advanced by Interior in opposing GCI's request for an accelerated docket were the fact

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37 Petition, Exhibit A.

38 In the interest of reducing the amount of documentation attached to this Reply Comment and to avoid duplication of exhibits, Exhibit D is attached without the attachments that were filed with it with the Enforcement Bureau.

that GCI's request under Section 51.715 raised novel and complex legal issues requiring resolution by the Commission, that the numerous operational issues that are still the subject of negotiation by the parties are not appropriate for resolution by means of a "mini-trial," and that the initiation of an accelerated docket is inappropriate in light of the "overwhelming disparity" in the parties' human and economic resources. Notwithstanding these arguments, the Enforcement Bureau has scheduled a mediation session between GCI and Interior for July 2, 2007.

This course of conduct on the part of GCI reflects the unfortunate reality that GCI has not approached Interior with a sincere intent of negotiating through the terms of a voluntary agreement in a focused and expeditious manner, but that GCI has elected instead to resort to negotiation by litigation. The numerous regulatory initiatives of GCI, both at the state and federal level, have distracted the Interior negotiating team from concentrating on resolution through bilateral discussions of open issues, and by all measures has dampened any spirit of cooperation. Interior imparts this information for the benefit of the Commission only for the purpose of pointing out that GCI's effort to apply an unduly expansive interpretation to Section 51.715 has strained Interior's ability to support the negotiation of complex provisions governing the operational and technical details of interconnection, and have materially slowed progress by the parties toward achieving a voluntary agreement for interconnection. Interior's experience in its effort to pursue a good faith negotiation with GCI dramatizes the fact that Section 51.715 should not be given the broad reading GCI requests the Commission put on it, as it will place small incumbent carriers in a position of disadvantage in relation to competitive local exchange entrants which neither the 1996 Act intended nor the Commission has previously required.

As the commenting parties supporting Interior's Petition have attested to, and as Interior knows from its personal experience, the use of Section 51.715 as a broad measure to permit

"interim interconnection" when the operational terms for such interconnection have not been agreed, would present practical issues for ILECs of a magnitude that is difficult to quantify, and would constitute as a result bad policy. Interior is unaware that the rule provision has ever been applied in the overly aggressive manner proposed by GCI, and requests that the Commission not allow it to be on a prospective basis. What GCI's Comment really says is that GCI believes Section 51.715 *should* permit the competitive entrant to seek interim interconnection covering a host of issues. That novel application of the rule, however, is properly the subject of a formal rulemaking, as the express terms of the rule limit its applicability to the imposition only of interim rates for transport and termination of traffic.

IV. GCI'S EFFORT TO INVOKE SECTION 51.715 WAS, IN THIS CASE, IMPROPER FROM THE OUTSET

GCI initially requested Interior to grant it "interim interconnection" in the Seward exchange effective June 18, 2007.[39] When Interior challenged GCI on the practicality of this request given the fact that GCI has a responsibility to provide 90 days notice to the RCA before initiating services in an exchange, GCI replied that it would give the requisite 90 days notice but that it wanted Interior to support its interim interconnection request by June 18 so that it could conduct testing to ensure that the parties' interconnection was operating properly.[40] In this follow-up request, GCI accused Interior of forcing it to delay its initiation of services in violation of the intention of Section 51.715 as addressed in the *Local Competition Order*.[41] Interior found GCI's second request equally puzzling from an operational view since testing can normally be satisfactorily conducted over a period of a number of days, and certainly in far less than seven weeks as GCI was suggesting was required. As a result, while declining to accept GCI's request

[39] Petition, Exhibit A.
[40] Petition, Exhibit C.
[41] *Id.* at 2-3.

for interim interconnection as of any specific date pending the completion of negotiations or arbitration, Interior did advise GCI that it would provide reasonable testing procedures in advance of GCI's actual operational date.[42] GCI subsequently provided the RCA with the required 90-days notice of intention to commence operations in Seward on May 3, 2007, and amended its demand on Interior for "interim interconnection" to August 1, 2007.

In the meantime, Interior has learned that the actual basis for GCI's request for interim interconnection effective June 18, 2007 was in no manner related to an intention to commence the provision of services to end users. Instead, the date of June 18 was selected by GCI because that is the date, under the parties' agreement governing their negotiations, by which GCI must request arbitration of any unresolved issues in the negotiation. GCI was actually attempting to use the request for interim interconnection as leverage to encourage Interior to avoid arbitration of the interconnection agreement.

As cited by GCI to Interior when it pursued its requests for interim interconnection in April of this year, the Commission views the purpose of Section 51.715 as a measure to protect competitive carriers from being forced to choose "either to accept transport and termination rates not in accord with these rules or to delay its commencement of service until the conclusion of the arbitration and state approval process."[43] Even if GCI were correct in its interpretation of the applicability of the rule, therefore, which Interior does not concede, it was improper for GCI to invoke the rule in the name of commencing the expeditious provision of services to the Seward public, when in fact it had neither authority nor operational intention to commence service on that date but was employing the rule as a maneuver in its negotiation process with Interior.

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42 Petition, Exhibit D.

43 *Local Competition Order,* ¶1065.

Even now, GCI continues to refer to its desire for interim interconnection as of August 1, 2007 as a "time sensitive" dispute.[44] Interior recommends that, prior even to considering the merits of GCI's position in this proceeding, the Commission make reasonable inquiry with GCI to confirm that the August 1, 2007 requested date for interim interconnection is in fact the date on which GCI intends to launch services in Seward, and not just another ploy to confuse and disrupt the negotiating process with Interior.

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[44] GCI Comments, at 19.

CONCLUSION

As demonstrated by the comments filed in this proceeding, Interior has presented the Commission with the only straightforward and practical reading of 47 C.F.R. § 51.715 that is supported by the plain language of the provision, as well as the *Local Competition Order*. As further demonstrated herein, a reading that 47 C.F.R. § 51.715 requires interim interconnection at any time during the Section 252 negotiation and arbitration section would present serious and harmful practical issues for ILECs and would result in bad policy. For the foregoing reasons, and those in Interior's Petition, the Commission should issue a Declaratory Ruling clarifying that 47 C.F.R. § 51.715 does not require an ILEC to provide interim interconnection when it is in the process of negotiating non-price interconnection terms pursuant to the timelines established in Section 252 of the Act and when no dispute exists regarding the rates applicable to the transport and termination of traffic.

Respectfully submitted,

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